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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 502

BROTHERHOOD OF RAILROAD TRAINMEN,
Petitioner,

v.

CERTAIN CARRIERS REPRESENTED BY THE EASTERN, WESTERN AND SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEES, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

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BRIEF IN OPPOSITION FOR RESPONDENT TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

Opinions Below

The opinion of the Court of Appeals (Pet. App. A), not yet officially reported, is unofficially reported at 55 CCH Labor Cases ¶ 11,913. The opinion of the District Court (JA 119-121) is not reported.

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* For reasons best known to itself, petitioner has included as respondents in the caption of its petition "Certain Carriers Represented by the Eastern, Western and Southeastern Carriers' Conference Committees" in addition to the named individual railroad on whose behalf this brief is filed. The only railroad named as respondent below was that railroad—the Terminal Railroad Association of St. Louis. In order to avoid confusion, however, we have adopted the caption utilized by petitioner.

Jurisdiction

The jurisdictional requisites are adequately set forth in the petition.

Questions Presented

1. Whether Arbitration Board No. 282 retains its primary jurisdiction of disputes as to the meaning and application of its Award, under Sections 7 and 8 of the Railway Labor Act (45 U.S.C. §§ 157, 158), although P.L. 88-108 (77 Stat. 132), which initially ordered the arbitration, now has expired?

2. Whether the Terminal Railroad Association of St. Louis implemented the Award by Arbitration Board No. 282 in a manner that complied with the Award.*

Statement of the Case

In November of 1959, most of the nation's Class I railroads served five unions (including petitioner) with notices under Section 6 of the Railway Labor Act (45 U.S.C. § 156) of proposed changes in a number of obsolete rules which were causing serious overmanning of trains. One of the proposals thus made was to abolish all rules requiring the use of trainmen in road and yard service, and to permit

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* This second question, corresponding to the second question purportedly presented by the petition (Pet. 2), would arise only if the Court of Appeals were reversed with respect to its holding that the dispute involved in this case is within the primary jurisdiction of Arbitration Board No. 282. However, the court below did not pass upon the question, and petitioner has not discussed it in its statement of "reasons for granting the writ," as required by Rule 23(f) of the Rules of the Court (1967). Moreover, the question obviously is not of general importance but instead concerns only the merits of a dispute as to the manner in which a particular railroad implemented a particular arbitration award, the effective period of which has now expired. See pp. 3-5, *infra*. We submit, therefore, that the question has not properly been presented for review and in any event is not an appropriate question for review.

management, in its discretion, to determine the number of trainmen to be used. In September of 1960, the unions served the railroads with Section 6 notices of various counterproposals, including a proposal by petitioner to establish a rule requiring the use of at least two trainmen on all crews in road and yard service. The parties then exhausted the "major" dispute procedures of the Railway Labor Act (45 U.S.C. §§ 151-160) without settling the dispute, and thus were in a position to resort to self help including strikes by the unions. See *Locomotive Engineers* v. *B. & O. R. Co.*, 372 U.S. 284 (1963).

To prevent the impending disaster, Congress enacted P.L. 88-108 (77 Stat. 132) in August of 1963. Section 1 of the statute prohibited the use of self help with respect to the issues in dispute. Section 3 committed the crew-consist issue and another issue involving the use of locomotive firemen to final and binding arbitration. Section 4 provided that "to the extent not inconsistent with this joint resolution the arbitration shall be conducted pursuant to sections 7 and 8 of the Railway Labor Act" and that "the board's award shall be made and filed as provided in said sections and shall be subject to section 9 of said Act." The last sentence of section 4 added that the award should continue in force for a period to be determined by the arbitration board, not to exceed two years. Section 6 required the parties to resume bargaining with respect to issues not committed by section 3 to arbitration. And section 8 provided that the "joint resolution shall expire one hundred and eighty days after the date of its enactment, except that it shall remain in effect with respect to the last sentence of section 4 for the period prescribed in that sentence." Section 8 thus lifted the ban on self help imposed by section 1, with respect to issues not committed to arbitration, after a period of time sufficient to allow for bargaining with respect to those

issues, and with respect to the issues committed to arbitration, after the expiration of the effective period of the arbitration award.[1]

In accordance with the joint resolution, an arbitration board (designated as Arbitration Board No. 282) was established to conduct the arbitration pursuant to sections 7 and 8 of the Railway Labor Act. Section III of the Award by Board 282 dealt with the crew-consist issue. Section III provided that existing rules requiring "stipulated" numbers of trainmen would temporarily remain in effect; that either party to such a rule might serve the other with a notice of proposed changes; that the parties should confer for the purpose of attempting to reach agreement upon the proposal in the light of specified "guidelines"; and that, if no agreement were reached, the dispute might be submitted by either party to a special board of adjustment for final decision pursuant to the specified guidelines (JA 14-19).

Petitioner and three others unions filed petitions to impeach the Award, pursuant to section 9 of the Railway Labor Act (45 U.S.C. § 159), but the validity of the Award was sustained. *Brotherhood of Loc. Fire. & Eng.* v. *Chicago, B. & Q. R. Co.*, 225 F. Supp. 11 (D. D.C., 1964), *aff'd per curiam*, 331 F. 2d 1020 (D.C. Cir., 1964), *cert. den.*, 377

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[1] "As amended by the committee, [section 8] provides that this joint resolution will expire 150 days [later changed to 180 days] after the date of its enactment with respect to all issues except the two principal issues. With respect to the two principal issues, the resolution will remain in effect insofar as concerns the provisions of the last sentence of section 4. That sentence provides that the arbitration award covering the fireman (helper) and crew consist issues will continue in effect for a period not to exceed 2 years from the date it takes effect unless the parties agree to a different period. This means that no change in rates of pay, rules, or working conditions, and no strike or lockout over any dispute involving these matters, may occur with respect to these issues covered by arbitration for 2 years after the arbitration award is filed, except by agreement of the parties." H.R. Rep. No. 713, 88th Cong., 1st Sess., p. 15.

U.S. 918 (1964). The Award became effective with respect to the crew-consist issue on January 25, 1964, and remained in effect for two years thereafter, through January 25, 1966. *Id.*, at 16; *Brotherhood of Railroad Trainmen* v. *Akron & Barberton Belt R. Co.*, — F. 2d —, 55 CCH Labor Cases ¶ 11,912 (D.C. Cir., 1967), supplemental opinion, — F. 2d —, 56 CCH Labor Cases ¶ 12,095 (D.C. Cir., 1967).

In January of 1964, pursuant to section III of the Award by Board 282, respondent served petitioner with a notice proposing changes in rules requiring a specified number of trainmen on certain crews. The proposal ultimately was referred to a special board of adjustment. That board rendered its award in October of 1964. The award (JA 24-45) authorized respondent to reduce by one member the "consist" of a number of crews and denied respondent's proposal in certain other respects (JA 68).

In May of 1965, respondent implemented the award in the manner that gave rise to the present litigation, after three earlier attempts by respondent to implement the award in a manner satisfactory to petitioner had failed to satisfy petitioner (JA 68-71, 174-178). Specifically, respondent permanently discontinued a number of the positions which it had been authorized to discontinue by the special board award, thereby forcing certain employees to respondent's extra boards where the employees are used to fill temporary vacancies as they arise (JA 71-73). Respondent was of the view that its action in that respect was proper under the Award by Board 282. The Award provided that no employee "shall have any right to jobs or positions that the carrier may discontinue pursuant to the provisions of this Award if other employment [in road or yard service], for which such employee is qualified, is available to him in his seniority district" (JA 19), and Board 282 has ruled that under that provision carriers may force

employees to the extra boards to meet the needs of such boards by discontinuing positions which are subject to discontinuance under special board awards (Pet. App. 5a-8a; JA 125, 134-135, 146-147). Petitioner claimed, however, that the men forced to respondent's extra boards had not received "other employment" within the meaning of Award 282 and, therefore, that the men were entitled to work in the discontinued positions (JA 20-23).

Section 7 Third (c) of the Railway Labor Act (45 U.S.C. § 157 Third (c)) provides for the reconvening of arbitration boards to resolve disputes as to the meaning and application of arbitration awards, and section 8(m) of the Act (45 U.S.C. § 158(m)) provides that "any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board . . . ." Pursuant to those provisions, numerous disputes as to the meaning and application of the Award by Board 282 have been referred to Board 282 (see JA 121-153; Pet. 3-4, 5), and on April 15, 1965, the United States Court of Appeals for the District of Columbia Circuit ruled that such disputes as to the meaning and application of the Award must be decided initially by Board 282 rather than by the courts. *Brotherhood of Railroad Train.* v. *Chicago, M., St. P. & P. R. Co.*, 345 F. 2d 985 (D.C. Cir., 1965). *Accord: Brotherhood of Railroad Trainmen* v. *Certain Carriers, Etc.*, 349 F. 2d 207, 210 (D.C. Cir., 1965); *New York, C. & St. L. R. Co.* v. *Brotherhood of Loc. Fire. & Eng.*, 358 F. 2d 464, 468-469 (6th Cir., 1966); *Brotherhood of Railroad Trainmen* v. *Missouri Pac. R. Co.*, 230 F. Supp. 197, 202 (E.D. Mo., 1964); *In re Certain Carriers*, 229 F. Supp. 259, 260 (D. D.C., 1964).

Nevertheless, petitioner did not submit its contention that respondent had misinterpreted and misapplied Award 282 to Board 282 for a ruling in accordance with sections 7 and

8 of the Railway Labor Act. Instead, in January of 1966, some eight months after respondent had implemented the special board award in the manner to which petitioner objects and shortly before the expiration of the period during which the Award by Board 282 remained in effect, petitioner filed a motion for supplemental relief in the United States District Court for the District of Columbia, seeking an order requiring respondent to compensate individual employees affected by respondent's allegedly improper application of the Award and compelling respondent to comply with petitioner's disputed interpretation (JA 20-23).

The District Court determined that "although the question is not as clear as counsel seem to argue," the "necessary inference or implication" from previous rulings by Board 282 was that the employees represented by petitioner were "not entitled to be assigned to work in positions that have been abolished" (JA 120). Therefore, the District Court denied the motion for supplemental relief "without prejudice, however, to its renewal if the question is submitted to Board 282 and a different conclusion is reached by that Board" (JA 121).

Petitioner appealed from that determination (JA 80), contending that respondent had violated the Award by Board 282, and that the District Court therefore should have granted the requested relief. During oral argument, counsel for petitioner was asked why petitioner had not submitted its contentions as to the meaning and application of the Arbitration Award to Board 282 for a ruling. In response, counsel advised the court that petitioner had not done so because the Arbitration Award was "unambiguous." Then, in addition, he suggested that in any event it was by then too late to submit the dispute to Board 282 because, as the Court of Appeals characterized the contention, "there

was some doubt whether the Board continued to exist or had jurisdiction to interpret its own award after the expiration of the award in January 1966" (Pet. App. 9a).

Relying on its previous holdings to the same effect, see p. 6, *supra*, the Court of Appeals concluded that the parties' dispute as to the meaning and application of Award 282 was within the primary jurisdiction of Board 282 under sections 7 and 8 of the Railway Labor Act. In so holding, it addressed and rejected petitioner's "suggestion" that Board 282 had lost its primary jurisdiction of such disputes when its Award expired in January 1966 (Pet. App. 9a-10a):

> ". . . We must take cognizance of this question, if the parties are not to be left in limbo.
>
> "We think that both in reason and in law Arbitration Board No. 282, despite the statutory limitation on the period to be governed by its award, must have the power to make its award effective during that period by interpretation. We find support for this view in P.L. 88-108 itself. Section 4 provides that 'To the extent not inconsistent with this joint resolution the arbitration shall be conducted pursuant to sections 7 and 8 of the Railway Labor Act, the board's award shall be made and filed as provided in said sections and shall be subject to section 9 of said Act. . . .' Referring to section 8 of the Railway Labor Act (45 U.S.C., § 158), we note that while paragraph (j) requires a specific limitation on 'the period during which the award shall continue in force', paragraph (m) provides that 'any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board. . . .' We see no reason why this sensible provision can be said to be 'inconsistent' with the objectives of P.L. 88-108, and therefore we hold

> that Arbitration Board 282 retains similar power to pass upon differences arising out of the contentions of these parties as to the meaning or application of Section III-D of the award. Congress, seeking 'a complete and final disposition', must have intended that the Board's interpretations must determine the boundaries of rights, privileges, and obligations of the parties with respect to the two-year period specified. It could not have intended that an hiatus exist as to this period, or, alternatively, a mixed application of Board and court rulings."

Petitioner sought a rehearing on the ground, among others, that the Court of Appeals' ruling was incorrect because P.L. 88-108 had expired (Pet. 4). However, the Court of Appeals denied the petition for rehearing without opinion (Pet. App. 11a), and petitioner now seeks review by this Court.

Argument

The question presented[2] is neither the subject of conflicting decisions nor a question of general importance. Rather, it concerns the effect of the expiration of a statute intended by the Congress to be a "one-shot" solution for a particular railway labor dispute[3] on the powers of a particular arbitration board under the Railway Labor Act. Moreover, the question was rightly decided below.

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[2] The discussion herein deals only with the question discussed in petitioner's statement of reasons for granting the writ (Pet. 5-8)—the question as to the primary jurisdiction of Board 282 with respect to the dispute involved in this case. Petitioner's statement of the questions presented (Pet. 2), however, includes an additional question, as to which see the footnote to our statement of the questions presented, p. 2, *supra*.

[3] "[The joint resolution] is what it purports to be—a one-shot solution through legislative means to a situation which imperiled beyond question the economy and security of the entire Nation." S. Rep. No. 459, 88th Cong., 1st Sess., p. 7; see also H.R. Rep. No. 713, 88th Cong., 1st Sess., p. 13.

1. As noted above, by command of the Congress the arbitration by Board 282 was conducted and the Board's Award was made "pursuant to sections 7 and 8 of the Railway Labor Act" (P.L. 88-108, § 4). However, the petition does not purport to present any question as to the construction and application of sections 7 and 8 apart from the effect thereon of the expiration of P.L. 88-108. Nor could it.

It is well established that disputes as to the meaning and application of an arbitration award made pursuant to sections 7 and 8 must be referred initially to the arbitration board and may not be resolved by the courts. As the court below held, that is plainly required by section 8(m), which provides that "any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board" (45 U.S.C. § 158(m); see also 45 U.S.C. § 157 Third (c)). Cases that have dealt with the question have so held without exception. See decisions cited at p. 6, *supra; Western Air Lines* v. *Labor Commissioner*, 167 F. 2d 566 (9th Cir., 1948).

It is equally clear that the expiration of an arbitration award made pursuant to sections 7 and 8 does not affect the arbitration board's primary jurisdiction to resolve disputes as to the meaning and application of the award. The reasons for requiring an arbitration board to construe its award rather than permitting other tribunals to do so (see Pet. App. 8a-9a) are as relevant to disputes which remain undecided at the expiration of the award as they are to disputes which the board resolves prior to that time. Consequently, sections 8(h) and 8(i) of the Railway Labor Act provide for limitation of the time in which an arbitration board must commence its hearings and make and file its award, and (as the court below observed) section 8(j) provides for limitation of "the period during which the award shall continue in force" (45 U.S.C. § 158(h)-(j)), while

section 8(m) provides, without limitation as to time, that "any difference" as to the meaning and application of an arbitration award "shall be referred back" to the arbitration board (45 U.S.C. § 158(m)).

Thus, the decision below presents no general question as to the requirements of the Railway Labor Act. The holding below as to the powers of Board 282 was unexceptionable so far as sections 7 and 8 are concerned. The only question presented, therefore, concerns the effect of the expiration of P.L. 88-108 on a power that other arbitration boards unquestionably would have in similar circumstances—the power under sections 7 and 8 to determine disputes as to the meaning and application of awards made (as was the Award by Board 282) "pursuant to sections 7 and 8."

2. On no ground can the question as to the effect of the expiration of P.L. 88-108 on the powers of Board 282 under sections 7 and 8 be characterized as appropriate for review by this Court.

a. The question is not of general importance. It concerns only the effect of the expiration of a "one-shot" statute, see p. 9, at n. 3, *supra*, on the powers of a particular arbitration board. Now that the periods during which P.L. 88-108 and the Award by Board 282 were in effect have expired, there are not likely to be many future disputes over the meaning and application of the Award by Board 282 with respect to which the question would be relevant.[4] And the question could arise with respect to a future arbitration award only if the Congress were to enact

[4] Although there is no support in the record for the statement, petitioner is accurate in stating that Board 282 "has not decided any [disputes as to the meaning and application of its Award] since its expiration, and those submitted to it during its life and not decided, and others, remain undecided" (Pet. 5). We are not, however, aware of the existence of many such disputes.

another "one-shot" law identical to P.L. 88-108 some time in the future.

b. The question is not the subject of conflicting decisions. On the contrary, the only other decision which might be said to be relevant with respect to the effect of the expiration of P.L. 88-108 on the power of Board 282 to entertain disputes as to the meaning and application of its Award is *New York, C. & St. L. R. Co.* v. *Brotherhood of Loc. Fire. & Eng., supra,* 358 F. 2d 464 (6th Cir., 1966). In that case the Sixth Circuit held, one day before the expiration of the provisions in the Award relating to firemen,[5] that a debatable question as to the meaning and application of those provisions should be referred to Board 282.

c. The question was rightly decided below. To be sure, Board 282 was established by P.L. 88-108, and P.L. 88-108 has now expired. In the meantime, however, in accordance with the command of the Congress, Board 282 made an award "pursuant to sections 7 and 8 of the Railway Labor Act" (P.L. 88-108, § 4). As already noted, the Railway Labor Act itself provides that disputes as to the meaning or application of an award made pursuant to sections 7 and 8 "shall be referred back for a ruling" to the board that made the award and provides for the reconvening of the board for that purpose. Therefore, the authority of Board 282 with respect to the dispute involved in this case derives not from P.L. 88-108, but directly from the Railway Labor Act. As petitioner rightly observes, the Railway Labor Act "has not expired" (Pet. 6).[6]

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[5] The case was decided March 29, 1966. The effective period of the provisions relating to firemen in the Award by Board 282 ended on March 30, 1966, by virtue of stipulations between the parties entered into pursuant to Section 4 of P.L. 88-108 and Section IV of Award 282 (JA 19). See *Brotherhood of Railroad Trainmen* v. *Akron & Barberton Belt R. Co., supra.*

[6] None of the cases cited by petitioner (Pet. 7) involves an even remotely analogous situation. See *Ex Parte McCardle,* 7 Wall. (74 U.S.) 506

The Congress did not intend that the expiration of P.L. 88-108 should deprive Board 282 of powers deriving directly from sections 7 and 8, but included an expiration provision in P.L. 88-108 for the quite different purpose of terminating the ban on self help imposed by section 1 of the statute. See p. 4, at n. 1, *supra*. As the court below concluded, the Congress, seeking a "complete and final disposition" (P.L. 88-108, § 3) of the crew-consist dispute, "must have intended that the Board's interpretations must determine the boundaries of rights, privileges, and obligations of the parties with respect to the two-year period specified" (Pet. App. 10a).[7]

The court's conclusion as to the intent of the Congress in that respect is confirmed by the understanding manifested by all who have had any responsibility for the administration of P.L. 88-108, in connection with previous disputes as to the meaning and application of the Award by Board 282. The expiration clause in P.L. 88-108 provided for the expiration of the statute 180 days after the date of its enactment. Therefore, petitioner's theory that the expiration of P.L. 88-108 deprived Board 282 of the power to rule

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(1869); *Carpenter* v. *Wabash Ry. Co.*, 309 U.S. 23 (1940); *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *American Foundries* v. *Tri-City Council*, 257 U.S. 184 (1921); *Bruner* v. *United States*, 343 U.S. 112 (1952); *Brotherhood of Rail. Train.* v. *Denver & R. G. W. R. Co.*, 370 F. 2d 833 (10th Cir., 1966), *cert. den.*, 386 U.S. 1018 (1967).

[7] Petitioner claims that there is an inconsistency between the holding that Board 282 retains its power under sections 7 and 8 of the Railway Labor Act to entertain disputes as to the meaning and application of its Award, and the holding in *Brotherhood of Railroad Trainmen* v. *Akron & Barberton Belt R. Co.*, *supra*, that the powers of the parties to take certain procedural steps authorized by the Award by Board 282 terminated when the Award expired (Pet. 6-7). While the carriers disagree with the holding in *Akron & Barberton* to which petitioner refers, it is sufficient here to note that the two issues have nothing in common. This case concerns powers of Board 282 which derive from sections 7 and 8 of the Railway Labor Act, which have not expired, while the issue in *Akron & Barberton* to which petitioner refers concerned powers which derive from the Arbitration Award, which has expired.

on disputes as to the meaning and application of the Award would apply not only to rulings following the expiration of the Award in January 1966, but to any ruling made by the Board after the expiration of P.L. 88-108 in February 1964.[8] Yet Board 282 rendered hundreds of rulings as to the meaning and application of its Award between February 1964 and January 1966, and on no occasion did Board 282, or the National Mediation Board, or any court, or any party to the Award, question the power of Board 282 to make such rulings. Indeed, in Nos. 499, 500, and 501, petitioner itself is now seeking review by this Court of three such rulings but has not questioned the power of Board 282 on this ground.

d. Moreover, even if petitioner were right in contending that the expiration of P.L. 88-108 deprived Board 282 of the power to rule on disputes as to the meaning and application of its Award, the decision below nevertheless would have to be affirmed. In its motion for supplemental relief, petitioner sought relief with respect to individual employees' claims and grievances premised upon respondent's alleged violation of the Award by Board 282 (JA 20-23). However, the National Railroad Adjustment Board has exclusive jurisdiction of such individual claims and grievances under section 3 of the Railway Labor Act (45 U.S.C. § 153).[9]

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[8] P.L. 88-108 was enacted on August 28, 1963. The expiration clause in the statute provided that "this joint resolution shall expire one hundred and eighty days after the date of its enactment, except that it shall remain in effect with respect to the last sentence of section 4 for the period prescribed in that sentence" (P.L. 88-108, § 8). Therefore, the statute expired in February 1964. The exception regarding "the last sentence of section 4" does not affect the matter in any way relevant here, because the last sentence of section 4 provided only that the "award shall continue in force for such period as the arbitration board shall determine . . . not to exceed two years"—not that Board 282 should continue in existence for a period of two years.

[9] *Locomotive Engrs.* v. *L. & N. R. Co.*, 373 U.S. 33, 38 (1963); *Pennsylvania R. Co.* v. *Day*, 360 U.S. 548 (1959); *Order of Conductors* v. *Southern R. Co.*, 339 U.S. 255 (1950); *Slocum* v. *Delaware, L. & W. R. Co.*, 339 U.S. 239 (1950); *Order of Conductors* v. *Pitney*, 326 U.S. 561 (1946).

Consequently, the Adjustment Board would have exclusive jurisdiction of the disputed issues if Board 282 did not have primary jurisdiction under sections 7 and 8. Therefore, even if Board 282 has lost the power to resolve the issues in dispute in this case, as petitioner contends, the holding below, that the courts do not have such power, nevertheless is correct.[10]

e. Finally, petitioner states that the "question of the continuing jurisdiction of the arbitration board to make such adjudications [as to the meaning and application of its Award] after the expiration of the statute creating it was not briefed or argued but arose during oral argument in the Court below," and was then briefed by petitioner, for the first time, in its petition for rehearing (Pet. 4). Petitioner's failure to raise the question in a timely fashion and to give the Court of Appeals the benefit of whatever briefing petitioner thinks the issue required are themselves sufficient reasons for denying the writ. See *Lawn* v. *United States*, 355 U.S. 339, 362, n. 16 (1958). Petitioner did not have to wait for oral argument in the Court of Appeals to raise the issue. Respondent has contended from the beginning (1) that its actions were permissible under the Award, and (2) that any debatable question as to the requirements of the Award in that regard must be resolved by Board 282 and cannot be resolved by the courts (JA 113-114).

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[10] If that were not so, the expiration of the Award either would have left "an hiatus"—no tribunal would have jurisdiction to resolve disputes as to the meaning and application of the Award by Board 282—or, alternatively, would have transferred jurisdiction from Board 282 to the courts, with a resulting "mixed application of Board and court rulings"—as the court below observed (Pet. App. 10a). The first of those undesirable alternatives obviously could not have been intended by the Congress, and the second would be wholly inconsistent with the intent implicit in the statutory command that the Arbitration Board should provide a "complete and final disposition" (P.L. 88-108, § 3) of the crew-consist dispute. See pp. 8-9, *supra*.

Conclusion

For the reasons stated above, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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